

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of May __, 2004, is made and entered by and among the following parties: (i) the State of Illinois (“Illinois”) (on behalf of itself, its political subdivisions and, to the full extent permitted by law, as class representative and *parens patriae* on behalf of natural persons residing in Illinois), by and through its Attorney General; and (ii) Ueno (as defined below), by and through their counsel of record. This Settlement Agreement is intended by the parties to fully, finally, and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions set forth below and as authorized by Illinois law. Capitalized terms are defined below.

I. Background

- A. Illinois has filed a complaint alleging that Ueno participated in a conspiracy to fix the price of sorbates, that as a result of the alleged conspiracy the price of sorbates was artificially raised and maintained, and that this resulted in harm to the State of Illinois, its political subdivisions and its natural citizens as indirect purchasers of sorbates.
- B. The Parties have determined it to be in their best interests to resolve this dispute and enter into the Settlement Agreement.
- C. The Parties consent to the jurisdiction and venue of the Cook County Circuit for the purposes of the Litigation only.
- D. Therefore, Illinois, by and through its Attorneys General, and Ueno, by and through its counsel, agree that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and

released, and the Litigation shall be dismissed on the merits and with prejudice, as to all Parties, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

II. Definitions

As used in this Settlement Agreement, the following terms shall have the meanings specified below:

- A. “Appeals Period” means the longer of: 1) the time in which an appeal from the Final Approval Order may be filed under the Illinois Supreme Court Rule 303; or 2) the time by which the Final Approval Order is affirmed by a Court of Appeals.
- B. “Complaint” means the complaint filed by the State of Illinois against Ueno and other defendants in Circuit Court of Cook County, No. 02CH19575, as well as any amended complaints.
- C. "Sorbates" means sorbic acid, potassium sorbate, sodium sorbate, and calcium sorbate in whatever form bought or sold.
- D. “Court” means the court with jurisdiction over the Litigation.
- E. “Distribution Plan” means the plan or method of allocation of the Settlement Fund on behalf of Represented Consumers.
- F. “Final Approval Order” means an Order issued after the conclusion of the Notice Period, which has not been reversed or set aside on appeal: (1) that the settlement set forth in the Settlement Agreement is approved finally as fair, reasonable and adequate; and (2) that the Judgment substantially in the form attached as Exhibit D shall be entered.

- G. “Judgment” means the judgment to be entered by the Court in the Litigation, substantially in the form attached as Exhibit D.
- H. “Litigation” means the legal action embodied in the Complaint.
- I. “Non-Refundable Portion” shall mean any tax payments made by Illinois on the III.A Payment.
- J. “Notice” means the notice required under 735 ILCS 5/2-806, to be given in conjunction with notice of the settlements involving the other defendants in Circuit Court of Cook County, No. 02CH19575.
- K. “Notice Period” means the time period set by the Court, during which counsel for Illinois are required to disseminate Notice to the Represented Consumers.
- L. “Parties” means, collectively, Illinois and Ueno.
- M. “Preliminary Approval Order” means an Order substantially in the form contained in Exhibit B.
- N. “Released Claims” means all claims identified in the Release appended as Exhibit A.
- O. “Represented Consumers” means all natural persons residing in Illinois who purchased Ueno Sorbates indirectly during the period from January 1, 1979 to December 31, 1997, but excluding those persons who timely and validly request exclusion from the Settlement Agreement in response to the Notice.
- P. “Settlement Agreement” means this agreement and all its exhibits.
- Q. “Settlement Fund” or “Fund” means the fifty thousand dollars (\$50,000) referred to in Paragraph III.A.

- R. “Ueno” means Ueno Fine Chemicals Industry, Ltd. and all of its successors, assigns, parents, subsidiaries, divisions, officers, directors, employees, agents, representatives, related or affiliated entities, and any other person acting on its behalf.

III. **Monetary Payment**

- A. Ueno shall pay Illinois the sum of fifty thousand dollars (\$50,000) in cash, which shall constitute the Settlement Fund. Ueno shall pay this sum to Illinois 30 days after the Court has issued a Preliminary Approval Order to a settlement in accord with the terms of this Settlement Agreement.
- B. The Settlement Fund, plus accrued interest, if any, shall be used to make the distribution described in Section V. The Settlement Fund may further be used by Illinois, in its sole discretion, to pay for administration, and other costs of this settlement.
- C. If Ueno does not make the payment required by this Agreement by the required dates, it shall pay interest to Illinois at the rate of 10% per annum. In addition, Illinois shall be entitled to a judgment against Ueno for the entire unpaid balance, plus interest at the rate of 10% per annum accruing from the date payment was due, and Ueno shall not oppose any application for such a judgment. Illinois shall be entitled, as part of an award in its favor in any action or proceeding to enforce such a judgment, to recover reasonable attorneys’ fees and costs incurred to obtain such award, and to defend such award on appeal.

- D. Illinois may apply to the court with jurisdiction over the Litigation for reimbursement of its attorneys' fees and expenses out of the Settlement Fund. Such funds may be used, at Illinois' discretion, for:
1. Reimbursement of attorneys' fees incurred by Illinois;
 2. Antitrust or consumer protection enforcement by the Attorney General of Illinois;
 3. Deposit into a Illinois antitrust or consumer protection account (e.g., a revolving account or trust account), for use in accordance with the law of Illinois); or
 4. Deposit into a fund exclusively dedicated to assisting the Illinois Attorney General to defray the cost of experts, economists, and consultants in state or multistate antitrust investigations and litigations.
- E. The costs and fees to be paid by Ueno in accordance with Paragraph III.A shall not include, and are in addition to, any costs or fees which may be sought in any action or proceeding to enforce the Judgment.
- F. Ueno agrees that if it defaults on any monetary payment required by this Agreement, Illinois may, in its sole discretion, declare this Agreement null and void ab initio, seek vacatur of the Judgment, and bring an action seeking full restitution for all consumers and state agencies, including statutory interest and the full amount of treble damages and other remedies that would have been available to Illinois prior to entry of this Agreement.

- G. Ueno by signing this agreement represents that, as of the date of this Settlement Agreement, it is not insolvent, nor does it reasonably believe that its payment of the Settlement Fund will render Ueno insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code.

IV. Judgment

- A. Ueno consents to, and Illinois agree to request, the entry of the Judgment set forth in Exhibit D by the Court in the Litigation. Entry of the Judgment in substantially the same form set forth in Exhibit D shall be a condition of this settlement.

V. Settlement Disbursements and *Cy Pres* Distribution Plan

- A. Due to the impracticability of identifying affected, indirect purchasers of Ueno's Sorbates referenced in the Complaint, potentially differing amounts of damages suffered by each purchaser, the high costs of administering a check refund program relative to the potential average award to individual purchasers, and other factors, the Settlement Fund will be used for distribution *cy pres* in lieu of consumer restitution. Illinois shall request Court approval for disbursement of such portions of the Settlement Fund by Illinois, in its sole discretion, either to the State; a political subdivision thereof; local government agency, department or instrumentality; or a not-for profit corporation and/or a charitable organization with the express provision that the funds be utilized to benefit health and fitness or nutrition-related causes. If a portion of the Settlement Fund is provided to a State, political subdivision or other governmental entity, such funding will not be used to supplant or replace funding for any program, purchase or activity, and the

budget of the State, political subdivision or other governmental entity will not be reduced to compensate for the award of this grant.

- B. The Settlement Fund may be used to pay the reasonable costs of selecting the recipients of the distribution and of administering the distribution.
- C. Within a time determined by the Court in the Preliminary Approval Order, Illinois shall submit its proposed Distribution Plan to the Court for its approval. A copy of the proposed Distribution Plan shall be promptly provided to The Defendants.
- D. It is understood and agreed by the Parties that: (1) any proposed Distribution Plan is not a part of the Settlement Agreement and (subject to the Court's approval) is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Settlement Agreement; and (2) any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel the Settlement Agreement or affect the finality of the Court's Judgment approving the terms of the Settlement Agreement, or any other orders entered pursuant to the Settlement Agreement.

VI. Notice Order and Settlement Hearing

- A. As soon as practicable after execution of this Settlement Agreement, Illinois will file a motion with the Court, which includes the Settlement Agreement and its exhibits, requesting entry of an Order substantially in the form of the "Preliminary Approval Order" appended as Exhibit B.
- B. Within the time determined by the Court in the Preliminary Approval Order, Illinois shall prepare a plan of notice which shall include notification utilizing

Internet Web sites and publication. Ueno agrees to cooperate with Illinois in securing approval by the Court of its proposed plan to the extent it provides reasonable notice. Illinois shall bear all costs of providing reasonable notice as ordered by the court in accordance with 735 ILCS 5/2-806 up to a total of \$120,000. The costs of providing Notice shall include payment to a mutually agreed upon third party experienced in the preparation of notice plans, which can provide a submission to the Court attesting to the sufficiency of the Notice Plan. The Parties agree and it is made a condition of this agreement that if (i) notice of this settlement cannot be given as part of the notice of settlement with the other defendants in Circuit Court of Cook County, No. 02CH19575, or (ii) the reasonably expected costs of the Notice Plan approved by the Court exceed \$200,000, Illinois may declare this Agreement null and void ab initio, seek vacatur of the Judgment, and bring an action seeking full restitution for all consumers and state agencies, including statutory interest and the full amount of treble damages and other remedies that would have been available to Illinois prior to entry of this Agreement.

- C. The content of the required notice shall be in the form agreed to by the parties in Exhibit C hereto, subject to approval by the Court.
- D. The Notice Period shall commence within 90 days after preliminary Court approval of the settlement and shall extend for 45 days unless otherwise ordered by the Court.

- E. Within a time to be determined by the Court in the Preliminary Approval Order, Illinois shall file a motion seeking a Final Approval Order.

VII. Releases

- A. Within 30 days of the issuance of the Final Approval Order, Illinois shall execute releases in the form attached hereto as Exhibit A, on behalf of itself, its political subdivision and Represented Consumers, expressly reserving all claims against any party except Ueno.

VIII. Conditions of Settlement and Effect of Cancellation

- A. If, prior to the Settlement Hearing, Represented Consumers have filed with the Court valid and timely requests for exclusion (“Requests for Exclusion”) in accordance with the provisions of the Preliminary Approval Order and the Notice, Illinois shall promptly (but in no event later than 15 days before the Settlement Hearing) provide Ueno with copies of Requests for Exclusion. If the number of Requests for Exclusion exceeds 5,000 persons or indirect purchasers of products containing over \$200,000 of sorbates, Ueno shall have 14 days after Ueno is so notified by Illinois to terminate the Settlement Agreement by providing written notification to Illinois.
- B. If the Settlement Agreement shall terminate, or be canceled, or shall not become effective for any reason, within twenty (20) business days after written notification of such event is sent by counsel for Ueno or Counsel for Illinois, the following shall be returned to Ueno: the Settlement Fund (including accrued interest) less the Non-Refundable Portion.

IX. Notifications

- A. All notifications or other writings required or permitted under this Agreement shall be provided to the following addresses:

For Ueno:

Sanford M. Pastroff
Sonnenschein Nath & Rosenthal, LLP
8000 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606

For Illinois:

Antitrust Bureau
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, IL 60601

- B. During the term of this agreement: Each Party shall provide the other notification, within seven days, of any change in its principal address; Ueno will provide Illinois, within seven days, with notification of any change in corporate name and any merger, dissolution, or sale of all or substantially all of its assets.

X. Miscellaneous Provisions

- A. The Parties (1) acknowledge that it is their intent to consummate this Settlement Agreement, and (2) agree to cooperate and exercise their best efforts to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement. The Parties will exercise their best efforts to obtain entry of the Judgment by the Court, and to obtain affirmance of that Judgment and the Preliminary and Final Approval Orders on appeal. Unless otherwise provided, the Parties will not seek to appeal such entry or approval, modify the Judgment (or its terms), or take any action, directly or indirectly, which might prevent or delay entry of the Judgment, or result in its vacatur or reversal.
- B. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Parties agree that the amount of the Settlement Fund, and the other terms of the Settlement, were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after full investigation, consultation with experienced legal counsel and arms-length negotiations. The Parties reserve their right to rebut, in a manner that such Party determines to be appropriate and as consistent with this Settlement Agreement, any contention made in any public forum that the Litigation was brought or defended in bad faith or without reasonable basis.
- C. Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement is or may be deemed to be or may be used as an admission of, or evidence of: (1) the validity of any Released Claim, or of any wrongdoing or liability of Ueno, or (2) any fault or

omission of Ueno in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Ueno may file the Settlement Agreement and/or the Judgment in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim or lack of personal jurisdiction.

- D. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.
- E. The Settlement Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in this Agreement. Except as otherwise provided in this Agreement, each Party shall bear its own costs.
- F. Counsel for Illinois and counsel for Ueno are expressly authorized by Illinois and Ueno to take all appropriate action required or permitted to be taken by the Parties pursuant to the Settlement Agreement to effectuate its terms.
- G. Each counsel or other person executing the Settlement Agreement or Release on behalf of any Party hereby warrants that such person has the full authority to do so.

- H. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.
- I. The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.
- J. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms for the Settlement Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. Nothing herein shall be construed as consent by the Parties to general personal jurisdiction within the State of Illinois, nor personal jurisdiction for any purpose other than the implementation and enforcement of the settlement embodied in the Settlement Agreement.
- K. All agreements made and orders entered during the course of Illinois' investigation or Litigation related to the confidentiality of information shall survive this Settlement Agreement.
- L. The Settlement Agreement and any related documents shall be subject to, governed by and construed, interpreted and enforced pursuant to the laws of the State of Illinois, without giving effect to any conflict of law principles.
- M. Nothing in the Settlement Agreement shall be construed as setting any precedent with respect to the Illinois Attorney General.

N. This Agreement shall be binding on, and shall inure to the benefit of, the Parties.

The Parties expressly disclaim any intention to create rights under this Agreement which may be enforced by any other person under any circumstances, except to the extent required by the exercise of Illinois' representative authority.

Dated: May ___, 2004

FOR THE OFFICE OF THE ILLINOIS ATTORNEY GENERAL

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